

2013 IL App (1st) 123823-U

SECOND DIVISION  
September 24, 2013

No. 1-12-3823

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> KENNETH B., A MINOR	)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	No. 12 JD 4179
v.	)	
	)	
KENNETH B., a minor,	)	Honorable
	)	Colleen F. Sheehan,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* Respondent's conviction was affirmed over his contention the trial court violated the one-act, one-crime doctrine; and respondent's mittimus is amended where he was entitled to 62 days of presentence custody credit.

¶ 2 Following a bench trial, 15-year-old respondent Kenneth B. was found guilty of one count of unlawful use of a weapon (U UW) and three counts of aggravated unlawful use of a weapon (AU UW). He was then sentenced on the U UW count only to a commitment in the Illinois Department of Juvenile Justice. On appeal, respondent acknowledges that the findings of guilt

merged at sentencing but contends that the trial court violated the one-act, one-crime doctrine by multiple findings of guilt based on the same physical act of possessing an assault rifle. He also contends that he is entitled to 62 days of presentence custody credit. We affirm as modified.

¶ 3 The record shows that respondent was charged with one count of UUW and three counts of AUUW stemming from an incident on October 20, 2012, where police saw him in possession of a loaded assault rifle near "8440 East 83rd Street" [*sic*] in Chicago. In particular, the UUW charge alleged that respondent possessed a machine gun in violation of section 24-1(a)(7)(I) of the Criminal Code of 1961 (Code) (720 ILCS 5/24-1(a)(7)(I) (West 2012)). The three AUUW counts alleged that he possessed a weapon: that was uncased, loaded, and immediately accessible; without a valid FOID card; and while under 21 years old and not engaged in lawful activities under the Wildlife Code. 720 ILCS 5/24-1.6(a)(1), (3)(A), (3)(C), (3)(I) (West 2012).

¶ 4 After trial, the court ruled that,

"[t]he State has proven their case beyond a reasonable  
doubt with respect to all of the counts. And that the minor was not  
on his own land or abode. He was not 21. He was not engaged in  
any activities under the wildlife code.

There is a finding of guilt on all counts."

¶ 5 At sentencing, the State noted that respondent had been found guilty of a Class X possession of a loaded machine gun and lesser-included charges. Defense counsel also recognized that the court found respondent guilty of a Class X felony and did not mention the lesser-included charges. The court committed respondent to the Illinois Department of Juvenile Justice. The order of commitment to the Department of Juvenile Justice indicates that there was only one committing charge, *i.e.*, "UUW-machine gun," a Class X offense, with a statutory citation of 720 ILCS 5/24-(a)(7)(I).

¶ 6 On appeal, respondent contends that the three findings of guilt for AUUW, as well as the UUW finding, were based on the single act of possessing an assault rifle on October 20, 2012. Respondent thus requests that we vacate his three AUUW findings under the one-act, one-crime doctrine, and enter judgment solely on the UUW adjudication because it was the most serious offense. See *People v. Artis*, 232 Ill. 2d 156, 170 (2009) (stating that under the one-act, one-crime doctrine, sentence should be imposed on the more serious offense and the less serious offense should be vacated).

¶ 7 In response, the State correctly concedes that all four charges stem from respondent's single act of possessing the assault rifle. See *People v. Miller*, 238 Ill. 2d 161, 165 (2010) (the one-act, one-crime doctrine prohibits multiple convictions when the convictions are carved from precisely the same physical act); see also *In re Samantha V.*, 234 Ill. 2d 359, 378 (2009) (applying the one-act, one-crime doctrine to juvenile proceedings). The State also concedes that because the UUW charge in this case was a Class X felony (720 ILCS 5/24-1(b) (West 2012)), and the AUUW charges were Class 4 felonies (720 ILCS 5/24-1.6(d) (West 2012)), the UUW charge was the most serious offense. See *Artis*, 232 Ill. 2d at 170 (stating that the seriousness of the offenses is determined by comparing their relevant punishments).

¶ 8 However, the State maintains that there was no violation of the one-act, one-crime doctrine because the trial court imposed a sentence on only the single count of UUW. The State asserts that although the trial court did not specifically state on the record that the four counts merged for sentencing, the mittimus unequivocally indicates that there was only one committing charge, *i.e.*, UUW.

¶ 9 We initially note that respondent concedes that he waived this issue by failing to object to this alleged error at trial. He maintains that we should review his one-act, one-crime issue pursuant to the second prong of the plain error doctrine because the potential for an unwarranted conviction and sentence threatens the integrity of the judicial process. See *People v. Carter*, 213

Ill. 2d 295, 299 (2004). However, the first step in the plain error analysis is to determine whether error occurred at all. *People v. Harris*, 225 Ill. 2d 1, 31 (2007). Here, we agree with the State that respondent has failed to show that any error occurred.

¶ 10 Although a written order of the trial court is evidence of the judgment of the court, the judge's oral pronouncement is the judgment of the court. *People v. Williams*, 97 Ill. 2d 252, 310 (1983); *People v. Whalum*, 2012 IL App (1st) 110959, ¶ 41. Where the common law record conflicts with the report of proceedings, the report of proceedings controls. *People v. Peebles*, 155 Ill. 2d 422, 496 (1993). "However, often apparent inconsistencies may be resolved by examining the record as a whole to determine whether the written order expresses the intent of the judge's oral pronouncement, or confirms to the oral pronouncement's sense and meaning but is merely set forth with greater specificity. Where looking at the record as whole, if the written order is *not* inconsistent with the intent, sense and meaning of the circuit court's oral pronouncement, the written order will be enforced." (Emphasis in original.) *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993).

¶ 11 Here, the record shows that the trial court found respondent guilty of one count of UYW and three counts of AUW. See *In re Veronica C.*, 239 Ill. 2d 134, 145 (2010) (a finding of guilt and a finding of delinquency are the same in a juvenile case). At sentencing, the court committed respondent to the Illinois Department of Juvenile Justice, but never announced if it was sentencing respondent on all four counts, merging the counts together, or imposing the sentence on one count in particular. The written order, however, specified that respondent was sentenced on one count of UYW only. Defendant expressly acknowledges that all counts merged for sentencing.

¶ 12 Despite respondent's contention to the contrary, there is no inconsistency between the court's oral pronouncement and its written order regarding the adjudications on which respondent was sentenced. Instead, the written order specified that respondent was sentenced on one count

of UUW, whereas the court's oral pronouncement made no finding regarding the counts upon which respondent would be sentenced. We thus enforce the court's written order and find that no error occurred in this case. See *Smith*, 242 Ill. App. 3d at 403 (stating that when the written order of judgment is more specific than the oral pronouncement of the court, the written order will be enforced if it is consistent with the sense and meaning of the court's oral pronouncement).

¶ 13 Moreover, we note that even if the common law record and the report of proceedings were in conflict with each other, we would follow the written order in the common law record in this instance. Our supreme court has previously held that the sentencing order may be considered to determine what sentence was imposed when the oral pronouncement of sentence was internally inconsistent. *Williams*, 97 Ill. 2d at 310; see also *People v. Hackett*, 130 Ill. App. 3d 347, 353 (1985) (stating that, "[c]ourts may determine which to follow, the common law record or the report of proceedings, depending on whether one of those sources has an internal inconsistency or would represent improper action"). Here, the sentencing order is in compliance with the one-act, one-crime doctrine. Therefore, even if the oral pronouncement indicated, which it does not, that respondent was sentenced on all four counts, we would follow the sentencing order, which was consistent with the law.

¶ 14 Respondent also contends, and the State correctly agrees, that he is entitled to 62 days of presentence custody credit. The record shows that respondent was arrested on October 20, 2012. Following his bench trial, he was sentenced to a commitment in the Illinois Department of Juvenile Justice on December 21, 2012. Nevertheless, he did not receive any credit for the days he spent in presentence custody.

¶ 15 A sentencing order may be corrected at any time. *People v. Latona*, 184 Ill. 2d 260, 278 (1998). The right to receive *per diem* credit is mandatory, and normal waiver rules do not apply. *People v. Williams*, 328 Ill. App. 3d 879, 887 (2002); see also *In re J.T.*, 221 Ill. 2d 338, 353 (2006) (a minor is entitled to the same presentence custody credit as an adult). A defendant is

statutorily entitled to credit for all time "spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2012); *Latona*, 184 Ill. 2d at 270. A defendant held in custody for any part of a day should be given credit against his sentence for that day. *People v. Smith*, 258 Ill. App. 3d 261, 267 (1994). However, a defendant is not entitled to presentence custody credit for the date of sentencing. *People v. Williams*, 239 Ill. 2d 503, 510 (2011). Therefore, we award respondent presentence custody credit from October 20, 2012, through December 20, 2012, which amounts to 62 days.

¶ 16 For the foregoing reasons, we amend the mittimus to award 62 days of presentence custody credit to respondent, and affirm the judgment of the trial court in all other respects.

¶ 17 Affirmed; mittimus corrected.